



General Assembly

January Session, 2009

**Amendment**

LCO No. 8049

\*HB0647008049HDO\*

Offered by:  
REP. SHAPIRO, 144<sup>th</sup> Dist.

To: Subst. House Bill No. 6470

File No. 823

Cal. No. 147

**"AN ACT CONCERNING RESIDENTIAL RETAIL HEATING OIL AND  
PROPANE CONTRACTS."**

1 Strike everything after the enacting clause and substitute the  
2 following in lieu thereof:

3 "Section 1. Section 16a-21 of the general statutes is repealed and the  
4 following is substituted in lieu thereof (*Effective October 1, 2009*):

5 (a) [No person, firm or corporation shall sell at retail fuel oil or  
6 propane gas to be used for residential heating without placing the unit  
7 price, clearly indicated as such, the total number of units sold and the  
8 amount of any delivery surcharge in a conspicuous place on the  
9 delivery ticket given to the purchaser or an agent of the purchaser at  
10 the time of delivery. No person, firm or corporation may bill or  
11 otherwise attempt to collect from any purchaser of fuel oil or propane  
12 gas an amount which exceeds the unit price multiplied by the total  
13 number of units stated on the delivery ticket, plus the amount of any  
14 delivery surcharge stated on the ticket.] For the purpose of this section,  
15 [unit price] (1) "unit price" means the price per gallon computed to the

16 nearest tenth of a whole cent; (2) "associated equipment" means a gas  
17 regulator, gas line, sacrificial anode, interconnecting hardware and  
18 such other equipment necessary for the installation and operation of a  
19 propane tank; and (3) "residential heating" means heat provided for a  
20 structure with at least one but not more than four dwelling units.

21 (b) (1) No person, firm or corporation shall sell at retail fuel oil or  
22 propane gas to be used for residential heating without a written  
23 contract that contains all the terms and conditions for delivery of such  
24 fuel oil or propane gas and the amount of fees, charges or penalties  
25 allowed under this subsection assessed to the consumer under such  
26 contract. No written contract shall contain any fees, charges or  
27 penalties except for propane tank rental fees, propane tank removal  
28 fees, liquidated damages and such other penalties for violation of the  
29 contract terms. Such fees may increase during the contract term  
30 provided the amount of such fees are clearly and conspicuously  
31 disclosed. No contract for the delivery of fuel oil or propane gas under  
32 this section shall include a provision for liquidated damages for a  
33 consumer breach of such contract where the liquidated damages  
34 exceeds the actual damages to the fuel oil or propane gas retailer  
35 caused by such breach. If a propane tank installed underground on  
36 property owned by the consumer is being leased or lent to such  
37 consumer, such contract shall provide the consumer with the option to  
38 purchase such tank and associated equipment upon the expiration of  
39 the contract and at such other times as provided in such contract for a  
40 commercially reasonable amount and any reasonable waiver of  
41 liability or transfer of warranty, which shall be stated in the contract.  
42 Any fuel oil or propane gas retailer may enter into a separate contract  
43 with the purchaser for additional services such as maintenance, repair  
44 and warranty of equipment, provided such contract complies with the  
45 provisions of this section. No written contract period shall be for a  
46 period greater than thirty-six months.

47 (2) Any written contract required by this section shall be in plain  
48 language pursuant to section 42-152, provided any fee, charge or  
49 penalty disclosed in such contract shall be in twelve-point, boldface

50 type of uniform font.

51 (c) The requirement that contracts be in writing as set forth in this  
52 section may be satisfied pursuant to the provisions of: (1) The  
53 Connecticut Uniform Electronic Transactions Act, sections 1-266 to 1-  
54 286, inclusive, (2) sections 42a-7-101 to 42a-7-106, inclusive, and (3) the  
55 Electronic Signatures in Global and National Commerce Act, 15 USC  
56 7001 et seq. Except as provided in subsection (d) of this section, verbal  
57 telephonic communications shall not satisfy the writing requirement of  
58 this section.

59 (d) The requirement that contracts be in writing pursuant to this  
60 section and section 16a-23n, as amended by this act, may be satisfied  
61 telephonically by a person, firm or corporation selling at retail fuel oil  
62 or propane gas, only if such person, firm or corporation: (1) Has  
63 provided to the consumer prior to any telephonic communication all  
64 terms and conditions of the contract, in writing, except for the contract  
65 duration, the unit price and the maximum number of units covered by  
66 the contract, (2) employs an interactive voice response system or  
67 similar technology which provides the consumer with the contract  
68 duration, the unit price and the maximum number of units covered by  
69 the contract, to complete the contract, (3) retains, in a readily  
70 retrievable format, a recording of the consumer agreeing to each such  
71 term and condition for the period of the contract plus one year, (4)  
72 sends the consumer a letter confirming the consumer's agreement to  
73 such terms and conditions, with the written stipulation that the  
74 consumer is bound by such terms and conditions unless the agreement  
75 is rescinded by the consumer, in writing, not later than three business  
76 days after receipt of such letter by said consumer, and (5) retains a  
77 copy of each such letter for not less than the period of the contract plus  
78 one year.

79 (e) (1) No person, firm or corporation shall deliver fuel oil or  
80 propane gas to be used for residential heating, without placing the unit  
81 price, clearly indicated as such, the total number of units sold and the  
82 amount of any delivery surcharge in a conspicuous place on the

83 delivery ticket given to the purchaser or an agent of the purchaser at  
84 the time of delivery. Except where the delivery of fuel oil or propane  
85 gas is placed in a common tank from which individual customers draw  
86 such fuel oil or propane gas and are billed according to a meter that  
87 measures such customer's usage from the common tank, no person,  
88 firm or corporation may bill or otherwise attempt to collect from any  
89 purchaser of fuel oil or propane gas an amount which exceeds the unit  
90 price multiplied by the total number of units stated on the delivery  
91 ticket, plus the amount of any delivery surcharge stated on the ticket.

92 (2) The requirement that contracts be in writing as set forth in this  
93 section shall not apply to any retail fuel oil or propane gas contract  
94 where no fee, charge or penalty is assessed, except for stating the unit  
95 price of the retail fuel oil or propane gas delivered to a consumer and  
96 any surcharge authorized under section 16a-22b, as amended by this  
97 act.

98 (f) The provisions of this section shall not apply to existing  
99 customers of a person, firm or corporation selling at retail fuel oil or  
100 propane gas on October 1, 2009, who have valid written contracts on  
101 said date. The provisions of this section shall apply as of the renewal  
102 dates of such contracts.

103 (g) The provisions of this section shall not apply to an existing  
104 customer of a person, firm or corporation selling at retail fuel oil or  
105 propane gas on October 1, 2009, who does not have a valid written  
106 contract in effect on said date, if such existing customer receives a  
107 written contract prior to January 1, 2010, containing all the terms and  
108 conditions for delivery of such fuel oil or propane gas and the amount  
109 of any fee, charge or penalty allowed under this section that such  
110 person, firm or corporation shall assess to the customer under such  
111 contract, provided: (1) Fees in such contract shall not be greater than  
112 the fees charged to such existing customer on October 1, 2009, and  
113 such fees may not increase during the contract term; (2) the existing  
114 customer may reject such contract by notifying the person, firm or  
115 corporation selling at retail such fuel oil or propane gas not later than

116 thirty days after the receipt of such written contract without any  
117 penalty, including, but not limited to, a tank removal fee; and (3) such  
118 written contract shall be effective if the existing customer does not  
119 reject such contract not later than thirty days after receipt of such  
120 contract. At the end of such contract's term, the provisions of this  
121 section shall not apply to an existing customer if such existing  
122 customer receives a written contract by certified mail, return receipt  
123 requested, not more than ninety days and not less than thirty days  
124 prior to the end of such contract's term, containing all the terms and  
125 conditions for delivery of such fuel oil or propane gas and the amount  
126 of any fee, charge or penalty allowed under this section that such  
127 person, firm or corporation shall assess to the customer under such  
128 contract, provided: (A) Fees in such contract and a comparison of such  
129 fees to the fees under the current contract shall be clearly and  
130 conspicuously disclosed; (B) the existing customer may reject such  
131 contract by notifying the person, firm or corporation selling at retail  
132 such fuel oil or propane gas not later than thirty days after the receipt  
133 of such written contract without any penalty, including, but not  
134 limited to, a tank removal fee; and (C) such written contract shall be  
135 effective if the existing customer does not reject such contract not later  
136 than thirty days after receipt of such contract. Such person, firm or  
137 corporation shall maintain the signed certified mail receipt for a period  
138 of not less than three years from the effective date of such contract.

139 (h) No person, firm or corporation shall condition the sale of fuel oil  
140 or propane to a consumer upon an agreement to purchase a fuel oil or  
141 propane tank from such person, firm or corporation. No person, firm  
142 or corporation shall condition the sale of a fuel oil or propane tank to a  
143 consumer upon an agreement to purchase fuel oil or propane from  
144 such person, firm or corporation.

145 [(b)] (i) Any person, firm or corporation who violates [subsection  
146 (a)] any provision of this section shall be fined not more than [one] five  
147 hundred dollars for the first offense, [nor] not more than [five] seven  
148 hundred fifty dollars for [each subsequent offense] a second offense  
149 occurring not more than three years after a prior offense and not more

150 than one thousand five hundred dollars for a third or subsequent  
151 offense occurring not more than three years after a prior offense.

152 (j) A violation of the provisions of this section constitutes an unfair  
153 trade practice under subsection (a) of section 42-110b.

154 Sec. 2. Section 16a-22b of the general statutes is repealed and the  
155 following is substituted in lieu thereof (*Effective July 1, 2009*):

156 (a) No retail dealer of fuel oil or propane shall assess a surcharge on  
157 the price of fuel oil or propane delivered to a customer if the delivery  
158 of the fuel oil or propane is in an amount [in excess] of one hundred or  
159 more gallons, except that a surcharge may be assessed if a delivery is  
160 made outside the normal service area or the normal business hours of  
161 the dealer or extraordinary labor costs are involved in making a  
162 delivery. No other fee, charge or penalty may be assessed, except as  
163 provided in section 16a-21, as amended by this act.

164 (b) No retail dealer of fuel oil or propane shall assess a residential  
165 customer a minimum delivery surcharge on any delivery initiated by  
166 the seller, including any delivery under an automatic delivery  
167 agreement.

168 (c) Any person, firm or corporation who violates a provision of this  
169 section shall be fined not more than five hundred dollars for a first  
170 offense, not more than seven hundred fifty dollars for a second offense  
171 occurring not more than three years from a prior offense and one  
172 thousand five hundred dollars for a third or subsequent offense  
173 occurring not more than three years after a prior violation.

174 (d) A violation of the provisions of this section constitutes an unfair  
175 trade practice under subsection (a) of section 42-110b.

176 Sec. 3. Subsection (b) of section 16a-23m of the general statutes is  
177 repealed and the following is substituted in lieu thereof (*Effective*  
178 *October 1, 2009*):

179 (b) Each person, firm or corporation seeking registration as a home

180 heating oil or propane gas dealer shall apply annually for a certificate  
181 of registration with the Department of Consumer Protection on forms  
182 prescribed by the Commissioner of Consumer Protection. Such forms  
183 shall require the dealer to disclose all affiliated companies registered  
184 with the Department of Consumer Protection that are under common  
185 ownership or have interlocking boards of directors. Each applicant  
186 shall pay a registration fee of one hundred dollars. The commissioner  
187 shall require all applicants for registration as a home heating oil or  
188 propane gas dealer to provide evidence of general liability insurance  
189 coverage and insurance to cover any potential environmental damage  
190 due to fuel oil spills or propane gas leaks caused by such applicant as a  
191 registered dealer which coverage shall be not less than one million  
192 dollars. Each registered dealer shall provide the department with  
193 evidence of each renewal of or change to such insurance coverage not  
194 later than five days after such renewal or change during the period of  
195 registration, which renewal or change shall meet the requirements of  
196 this subsection.

197 Sec. 4. Section 16a-23n of the general statutes is repealed and the  
198 following is substituted in lieu thereof (*Effective October 1, 2009*):

199 (a) As used in this section:

200 (1) "Capped price contract" means an agreement where the cost to  
201 the consumer of heating oil or propane may not increase above a  
202 specified price per gallon and the consumer may pay less than the  
203 specified price under circumstances specified in such contract;

204 (2) "Fixed price contract" means an agreement where the cost to the  
205 consumer of heating oil or propane is set at a specific price during the  
206 term of the contract;

207 (3) "Futures contract" means a standardized, transferable, exchange-  
208 traded agreement that requires delivery of heating oil or propane at a  
209 specified price on a specified future date;

210 (4) "Guaranteed price contract" means a fixed price or capped price

211 contract or any other agreement where the per gallon price for heating  
212 oil or propane is set at a specified amount unless certain circumstances  
213 occur;

214 (5) "Physical supply contract" means an agreement for wet barrels of  
215 oil or gallons of propane that has been secured by the heating oil or  
216 propane dealer from a wholesaler; and

217 (6) "Surety bond" means a bond issued by a licensed insurance  
218 company on behalf of a dealer, guaranteeing that such company will  
219 reimburse any consumer losses incurred as a result of the failure of the  
220 dealer to fulfill an obligation to a consumer.

221 [(a)] (b) A contract or a renewal or extension of a contract for the  
222 retail sale of home heating oil or propane gas that offers a guaranteed  
223 price [plan] contract, including fixed or capped price contracts and any  
224 other similar terms, shall be in writing and the terms and conditions of  
225 such price plan shall be disclosed, including a plain language  
226 description of the circumstances under which the price may increase or  
227 decrease. A capped price contract shall specify how the price will or  
228 will not decrease in relation to the heating oil or propane commodities  
229 market. Such disclosure shall be in plain language and shall  
230 immediately follow the language concerning the price or service that  
231 could be affected and shall be printed in no less than twelve-point  
232 boldface type of uniform font.

233 [(b)] (c) A home heating oil or propane gas dealer that advertises a  
234 price shall offer such price for a period of no less than twenty-four  
235 hours or until the next advertised price is publicized, whichever occurs  
236 first.

237 [(c)] (d) No home heating oil or propane gas dealer shall enter into,  
238 renew or extend a [prepaid home heating oil or propane gas contract  
239 or a capped price per gallon home heating oil] guaranteed price  
240 contract unless such dealer has, not later than five business days after  
241 receipt of such guaranteed price contract, either: (1) Obtained and  
242 maintained heating oil or propane gas futures or forwards contracts,



243 physical supply contracts or other similar commitments the total  
244 amount of which allow such dealer to purchase, at a fixed price,  
245 heating oil or propane gas in an amount not less than eighty per cent  
246 of the maximum number of gallons or amount that such dealer is  
247 committed to deliver pursuant to all [prepaid home heating oil or  
248 propane gas] guaranteed price contracts entered into, renewed or  
249 extended by such dealer, [or that such dealer estimates is committed  
250 pursuant to all capped price per gallon home heating oil or capped  
251 price per unit propane gas contracts, respectively,] or (2) obtained and  
252 maintained a surety bond in an amount not less than fifty per cent of  
253 the total amount of funds paid to the dealer by consumers [pursuant to  
254 prepaid home heating oil or propane gas contracts] or that the dealer  
255 estimates will be paid to the dealer by consumers pursuant to all  
256 [capped price per gallon home heating oil or capped price per unit  
257 propane gas contracts, respectively] guaranteed price contracts. Such  
258 dealer shall maintain such total amount of futures or forwards  
259 contracts, physical supply contracts or other similar commitments, or  
260 the amount of the surety bond required by this subsection for the  
261 period of time for which such [prepaid home heating oil or propane  
262 gas contracts or capped price per gallon home heating oil or capped  
263 price per unit propane gas contracts] guaranteed price contracts are  
264 effective, except that the total amount of such futures or forwards  
265 contracts, physical supply contracts or other similar commitments, or  
266 the amount of the surety bond may be reduced during such period of  
267 time to reflect any amount of home heating oil or propane gas already  
268 delivered to and paid for by the consumer.

269 [(d)] (e) No [prepaid home heating oil or propane gas] guaranteed  
270 price contract shall require any consumer commitment to purchase  
271 home heating oil or propane gas pursuant to the terms of such contract  
272 for a period of more than eighteen months.

273 [(e)] (f) Any [prepaid home heating oil or propane gas] guaranteed  
274 price contract shall indicate: (1) The amount of funds paid by the  
275 consumer to the dealer under such contract, (2) the maximum number  
276 of gallons of home heating oil or maximum amount of propane gas

277 committed by the dealer for delivery to the consumer pursuant to such  
278 contract, and (3) that performance of such [prepaid home heating oil or  
279 propane gas] guaranteed price contract is secured by one of the two  
280 options described in subsection [(c)] (d) of this section. Any such  
281 contract shall provide that the contract price of any undelivered home  
282 heating oil or propane gas owed to the consumer under the contract,  
283 on the end date of such contract, shall be reimbursed to the consumer  
284 not later than thirty days after the end date of such contract unless the  
285 parties to such contract agree otherwise.

286 [(f)] (g) Each home heating oil or propane gas dealer who enters  
287 into, renews or extends [prepaid home heating oil or propane gas  
288 contracts or capped price per gallon home heating oil contracts or  
289 capped price per unit propane gas] guaranteed price contracts shall  
290 inform the Commissioner of Consumer Protection, in writing, that  
291 such dealer is entering into, renewing or extending such contracts and  
292 shall identify any entity from which the dealer has secured futures or  
293 forwards contracts or other similar commitments or surety bonds  
294 pursuant to subsection [(c)] (d) of this section. Each such dealer shall  
295 notify the commissioner if at any time the total amount of such secured  
296 futures or forwards contracts, physical supply contracts or other such  
297 similar commitments or surety bonds held by the dealer is less than  
298 eighty per cent of the maximum number of gallons or amount that  
299 such dealer is committed to deliver pursuant to all such [prepaid home  
300 heating oil or propane gas] guaranteed price contracts entered into,  
301 renewed or extended by such dealer or that such dealer estimates it is  
302 committed to deliver pursuant to all of its [capped price per gallon  
303 home heating oil or capped price per unit propane gas] guaranteed  
304 price contracts, respectively. The commissioner shall prescribe the  
305 form in which such information shall be reported.

306 [(g)] (h) Each person from which a home heating oil or propane gas  
307 dealer has secured a futures [or forwards] contract, a physical supply  
308 contract or other similar commitment pursuant to subsection [(c)] (d)  
309 of this section or who provides a bond pursuant to this section shall  
310 notify the Commissioner of Consumer Protection, in writing, of the

311 cancellation of such contract, [or] other similar commitment or of the  
312 cancellation of such bond not later than three business days after such  
313 cancellation.

314 (i) The provisions of any contract entered into pursuant to this  
315 section shall not be enforceable against a survivor of a deceased  
316 customer upon the death of the customer signing such contract unless  
317 such survivor has accepted an express assignment of such contract in  
318 writing.

319 Sec. 5. Section 16a-23r of the general statutes is repealed and the  
320 following is substituted in lieu thereof (*Effective October 1, 2009*):

321 (a) A violation of the provisions of section 16a-23m, as amended by  
322 this act, 16a-23n, as amended by this act, or 16a-23o constitutes an  
323 unfair trade practice under subsection (a) of section 42-110b.

324 (b) In accordance with the provisions of section 53a-11, any [home  
325 heating oil dealer] person, firm or corporation who knowingly violates  
326 the provisions of subsection [(c)] (d) of section 16a-23n, as amended by  
327 this act, shall have committed a class A misdemeanor.

328 (c) Any person, firm or corporation who violates the provisions of  
329 section 16a-23m, as amended by this act, section 16a-23n, as amended  
330 by this act, except the provisions of subsection (d) of said section 16a-  
331 23n, or section 16a-23o, shall be fined not more than five hundred  
332 dollars for a first offense, not more than seven hundred fifty dollars for  
333 a second offense occurring not more than three years after a prior  
334 offense and not more than one thousand five hundred dollars for a  
335 third or subsequent offense occurring not more than three years after a  
336 prior violation.

337 Sec. 6. Section 16a-23p of the general statutes is repealed and the  
338 following is substituted in lieu thereof (*Effective October 1, 2009*):

339 (a) The Department of Consumer Protection may suspend or revoke  
340 any registration issued under section 16a-23m, as amended by this act,

341 if the holder of such registration is grossly incompetent, engages in  
 342 malpractice or unethical conduct or knowingly makes false,  
 343 misleading or deceptive representations regarding such holder's work,  
 344 violates any provision of section 16a-23n, as amended by this act, fails  
 345 to comply with any subpoena issued pursuant to subsection (b) of this  
 346 section or violates any regulations adopted under section 16a-23q.  
 347 Before any such registration is suspended or revoked, such holder  
 348 shall be given notice and opportunity for hearing as provided in  
 349 regulations adopted by the Commissioner of Consumer Protection in  
 350 accordance with the provisions of chapter 54.

351 (b) The commissioner may, at his or her discretion, compel by  
 352 subpoena the production of any documents from any dealer or from  
 353 any provider of futures contracts, physical supply contracts or other  
 354 similar commitments regarding compliance with the provisions of  
 355 sections 16a-23m to 16a-23r, inclusive, as amended by this act.

356 Sec. 7. (NEW) (*Effective July 1, 2009*) Nothing in sections 16a-21, 16a-  
 357 22b, subsection (b) of section 16a-23m, and section 16a-23n and 16a-23r  
 358 of the general statutes, as amended by this act, shall validate a  
 359 provision or clause that would otherwise be unenforceable pursuant to  
 360 section 42-150u of the general statutes."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	16a-21
Sec. 2	<i>July 1, 2009</i>	16a-22b
Sec. 3	<i>October 1, 2009</i>	16a-23m(b)
Sec. 4	<i>October 1, 2009</i>	16a-23n
Sec. 5	<i>October 1, 2009</i>	16a-23r
Sec. 6	<i>October 1, 2009</i>	16a-23p
Sec. 7	<i>July 1, 2009</i>	New section